

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMON GARCIA MERCADO,

Defendant and Appellant.

F077290

(Super. Ct. No. F17907278)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Michael G. Idiart, Judge.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

-ooOoo-

* Before Peña, Acting P.J., Smith, J. and Meehan, J.

INTRODUCTION

Appellant Ramon Garcia Mercado pled no contest to one count of violating Penal Code¹ section 4573.6, subdivision (a), unauthorized possession of a controlled substance in a prison, camp, or jail facility where prisoners in custody are located. Mercado contends the trial court failed to make an adequate inquiry into the factual basis for the plea and the matter must be remanded. We conclude any error was harmless.

FACTUAL AND PROCEDURAL SUMMARY

A felony complaint was filed on December 15, 2017, charging Mercado with having possessed heroin on April 19, 2017, while at the Miramonte Conservation Camp in violation of section 4573.6, subdivision (a). It also was alleged that Mercado had suffered a prior serious felony conviction. Mercado initially pled not guilty to the offense and denied the enhancement.

On March 1, 2018, Mercado signed a felony advisement, waiver of rights, and plea form in which he agreed to plead no contest to the section 4573.6, subdivision (a) charge and admit the prior serious felony conviction. He also waived his right to a probation report. In exchange for his plea, it was agreed that his maximum term of imprisonment would be four years. Defense counsel signed the form, verifying that she had discussed with Mercado the facts of the case, elements of the offense, possible defenses, and explained the consequences of the plea.

At the change of plea hearing on March 1, 2018, defense counsel notified the trial court that Mercado was prepared to enter a plea and requested immediate sentencing. The trial court proceeded to verify that Mercado had signed and initialed the change of plea form; understood the form, his constitutional rights, and consequences of the plea; and was waiving his constitutional rights.

¹ References to code sections are to the Penal Code.

The trial court then stated, “you are charged in Count 3 with a felony alleged to have been committed on April 19, 2017, possession of an illegal substance in a jail facility, which if true would be a violation of Penal Code section 4573.6(a), in that you knowingly possessed heroin at the Miramonte Conservation Camp.” Mercado was asked if he understood the charge and he responded, “Yes.”

The trial court proceeded to address other matters pertinent to the plea and sentencing, but never specifically stated the factual basis for the plea, nor did the trial court solicit a stipulation as to the factual basis for the plea. Sentence was imposed at the change of plea hearing in accordance with the plea agreement; the mitigated term of two years doubled to four years for the prior strike offense.

On April 4, 2018, Mercado filed a notice of appeal seeking to challenge the validity of the plea and requested a certificate of probable cause. The certificate of probable cause was denied by the trial court.

By order filed on October 22, 2018, this court deemed a certificate of probable cause to have issued from the superior court.

DISCUSSION

Mercado argues the trial court failed to fulfill its duty under section 1192.5 to make an adequate inquiry into the factual basis for his plea and, thus, the matter must be remanded. We find any error was harmless.

Standard of Review and Applicable Law

Under section 1192.5, when a trial court accepts a plea of guilty or no contest, it shall “cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.” (§ 1192.5.) In doing so, “the trial court must garner information regarding the factual basis either from the defendant or defense counsel.” (*People v. Holmes* (2004) 32 Cal.4th 432, 442 (*Holmes*).) “If the trial court inquires of defense counsel regarding the factual basis, counsel may stipulate to a particular document that provides an adequate factual basis, such as a

complaint, police report, preliminary hearing transcript, probation report, grand jury transcript, or written plea agreement.” (*Ibid.*) The trial court may also “satisfy its statutory duty by accepting a stipulation from counsel that a factual basis for the plea exists without also requiring counsel to recite facts or refer to a document in the record” provided that “the plea colloquy reveals that the defendant has discussed the elements of the crime and any defenses with his or her counsel and is satisfied with counsel’s advice.” (*People v. Palmer* (2013) 58 Cal.4th 110, 118.)

“[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court’s acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion. [Citation.] A finding of error under this standard will qualify as harmless where the contents of the record support a finding of a factual basis for the conditional plea.” (*Holmes, supra*, 32 Cal.4th at p. 443.)

Analysis

Here, there was no preliminary hearing because Mercado entered into a plea agreement and thus, no preliminary hearing transcript. There also was no probation report because the parties stipulated to waiving the report.

As to a factual basis, the plea agreement states that the basis is “*People v. West*.”² The court in *In re Alvarez* (1992) 2 Cal.4th 924, 932 characterized a *West* plea as a “plea of nolo contendere, not admitting a factual basis for the plea.” Such a plea “allows a defendant to plead guilty in order to take advantage of a plea bargain while still asserting his or her innocence.” (*People v. Rauon* (2011) 201 Cal.App.4th 421, 424.) As the court in *West* acknowledged, however, “[a] defendant who knowingly and voluntarily pleads guilty or nolo contendere can hardly claim that he is unaware he might be convicted of the offense to which he pleads.” (*People v. West, supra*, 3 Cal.3d at p. 612.)

² *People v. West* (1970) 3 Cal.3d 595.

There was, however, a factual basis for the offense set forth in the record, in the felony complaint, the plea agreement, and at the change of plea hearing. Section 4573.6, subdivision (a) provides in relevant part:

“Any person who knowingly has in his or her possession in any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any place where prisoners of the state are located under the custody of prison officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any place or institution, where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any jail, road camp, farm, place or institution, any controlled substances, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code”

Count 3 of the complaint sets forth the specific date of the offense, April 19, 2017; the illegal substance possessed, heroin; and the specific custodial facility, Miramonte Conservation Camp; and alleged these facts constituted a violation of section 4573.6, subdivision (a). The plea agreement signed and initialed by Mercado states that he is agreeing to plead no contest to count 3 of the complaint. The plea agreement also contains the verification of the attorney that she advised Mercado of the elements of the offense and concurred with the plea.

At the March 1, 2018 change of plea hearing, the trial court stated, “you are charged in Count 3 with a felony alleged to have been committed on April 19, 2017, possession of an illegal substance in a jail facility, which if true would be a violation of Penal Code Section 4573.6(a), in that you knowingly possessed heroin at the Miramonte Conservation Camp.” Mercado acknowledged he understood the charge.

The combination of the felony complaint, plea agreement, and acknowledgement of the facts underlying the charged offense at the change of plea hearing provide a sufficient factual basis for acceptance of a *West* plea. When a defendant changes his or her plea to guilty or no contest, the plea is deemed to constitute a judicial admission of every element of the offense charged. It serves as a stipulation that the People need not

introduce proof to support the accusation. “[T]he plea ipso facto supplies both evidence and verdict.” (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1363.)

The trial court’s acceptance of Mercado’s no contest plea falls within its “wide discretion in determining whether a sufficient factual basis exists” for a no contest or guilty plea. (*Holmes, supra*, 32 Cal.4th at p. 443.) The contents of the record supplied a factual basis for the no contest plea and any error on the part of the trial court in failing to make a further inquiry is harmless. (*Ibid.*)

DISPOSITION

The judgment is affirmed.